A

DISCOURSE

Concerning the

UNREASONABLENESS

OF

A New Separation,

On account of the OATHS.

WITH

An ANSWER to the HISTORY of

PASSIVE OBEDIENCE,

So far as relates to THEM.

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ERRATA.

PAge 8. line 21. read *of* England. P. 10. l. 24. r. *to preserve the Rights of*, &c. P. 18. l. 8. r. tied. P. 27. l. 28. *But it may be said*, our--- P. 36. l. ult. after *place* r., P. 37. l. 1. r. *as at that*--- and after *state* r., P. 38. l. ult. for *can* r. *such*: Marg. l. 6. r. *confestim.*

A

DISCOURSE

Concerning the

Unreasonableness of a New Separation

On account of the

OATHS.

SIR,

YOur former Letter gave me an Account of Your own and others Dissatisfaction about the Oaths; but your second carries the Point a great deal farther; for therein you tell me, *Those who are unsatisfied, think themselves bound to separate from the Communion of those who have taken them; and that if Ease be not given to the Scrupulous, new Congregations will be immediately formed; and therefore you beg my Assistance in clearing these Points, in order to the preventing a New Separation.*

I was not a little surprized at the reading these Passages; and I soon apprehended the mischievous Consequence of a *new Schism*, especially among the Members of the Church of *England*: But I can hardly think it possible that those who have expressed so great a Sense of the *Mischief* of it in others, should be so ready to fall into it themselves, and that upon the meer Account of *Scruples*; when the Difference is only about the Resolution of a Case of Conscience, wherein Wise and Good Men may easily differ: But it

cannot

cannot be a Mark either of *Wiſdom* or *Goodneſs*, to ſeparate from thoſe who do ſo. Some think the Oaths lawful, and therefore take them; others do not, and therefore forbear: But is taking the Oaths made a Condition of Communion with us? Is it required of all who joyn in our Worſhip, at leaſt, to declare, That they think the taking of them to be lawful? If not, what Colour can there be for breaking Communion on the Account of the Oaths?

Suppoſe thoſe who take the Oaths are to blame; If they act according to their Conſciences therein, what Ground can there be of Separation from them for ſo doing, unleſs it be lawful to ſeparate from all ſuch who follow the Dictate of an Erroneous Conſcience? And ſo there can be no End of Separations, till all Men's Conſciences judge alike: for a Man's Conſcience is his practical Judgment concerning Moral Actions; and there are ſo many Circumſtances, which vary the Nature of ſuch Moral Actions, as Oaths, that I do not wonder to ſee Men differ about them; but I ſhould wonder and lament to ſee them ſeparate from each other for the ſake of ſuch a Difference.

But, there is a great deal of Difference between a *Tenderneſs* and a *Sowreneſs* of Conſcience. There is a natural Tenderneſs in the Eye, which makes it apt to be offended with Motes; and in that Caſe it is to be gently dealt with: But when an ill Humour falls into it, there ſeems to be greater Tenderneſs, but from a worſe Cauſe; and then the beſt way of Cure is to ſweeten or remove the bad Humor which cauſed it. I cannot imagine why, becauſe ſome Men's Conſciences are ſo tender in the Point of Loyalty, that they cannot take the Oaths, that they muſt be ſo tender too, as not to joyn in Communion with thoſe who do it. This ſeems to come from another Cauſe, and not from the Original Scruple: Are they afraid of joyning with others, not ſo tender as themſelves? This is the *Scruple* about *mixt Communion*, which hath been ſo long exploded

exploded among us. What then? Have we hereby changed the Standard of our Communion, or are there in this Case imposed any new Terms of Communion with us? How then comes a Scruple about the Oaths, to lead men to think of a Separation? How come they to make so much Conscience of one, and so little of the other? Is a Separation from our Church become a Duty with those, who so lately looked on it as so great a Fault in others? But, I perceive, a tender Conscience is like a tender Constitution, it is soon put out of Order: So much greater Care then ought those to have who forsake any worldly Advantages for the sake of their Consciences, lest that which begun with a Scruple, at last end in Humour and Faction, and the Ruine of that Church, which they have alwaies pretended to value.

But to leave these general Reflections, I shall now apply my self to the main Point, Whether there be any Reason for these Scruples about the Oaths? for if there be not, it will be granted that there can be no Reason for a Separation on the Account of them. If there be any Reason, it must arise, either from the continuing Obligation of the former Oaths; or from the Nature of the present Oaths: And therefore I shall enquire into two things:

First, The Nature and Measure of the Obligation of Political Oaths in general.

Secondly, The Difficulties which relate to our Oaths in particular.

First, As to the Nature and Obligation of Political Oaths; by which I mean such as have immediate and particular Respect to Human Society, and the Government we live under; as all *Oaths* of *Allegiance* do.

And herein the Difference lies between those and the common Oaths between Man and Man; because these are founded on an Equality of Right, but the other on the general Security of Human Society.

In

In *Political Oaths* we must distinguish the particular *Intention* and *Designs* of the *Persons* to whom they are made, from the general *End* and *Scope* of the *Oaths themselves*. I do not deny but such Oaths at first came from the Mistrust, which those in Power had, of such as were at present in Subjection to them. And because the Fears of a Deity made the strongest Impressions on People's Minds, therefore they were not contented with bare Promises, but they added the Solemnities of Oaths, that they might look on God as concerned, both as a Witness and a Judge.

But if we search narrowly into this Matter, the Obligation comes not from the bare Oath, but from something antecedent to it, or from the Promise contained in it, to which the Oath adds greater Solemnity on the Account of Religion. And therefore it is generally resolved by the *Civilians* as well as *Casuists*, That *an Oath follows the Nature of the thing about which it is conversant*; *for that*, say they, *is the Principal, and the other is but the Accessary; and the Accessary still follows the Nature of the Principal.*

Less. de Just. & Jure, l. 2. c. 17 n. 52.

Molina de Just. & Jure, tr. 3. disp. 150.

Even *Molina*, who is noted for singularity in this Matter, (for asserting, That an Oath added an Obligation of Justice besides that of Religion) yet when he comes to explain himself, he founds it on the Promise included in the Oath, and not in the Oath it self: For after an Oath taken, such as the Obligation was before, such is it after, and the Promise contained in an Oath admits of the same Conditions, which it would have had, if no Oath had been joyned with it.

If there be a Law, which makes a Contract void, on the Account of the Publick Good, the adding an Oath to such a Contract doth not make it valid: As for Instance, if the Law of a Country makes void all clandestine Marriages; if a Man marries a Woman after such a manner, although this be an Obligation of the strictest Nature: Yet such is the Force and Power of Laws made for a Publick Good,

Good, that although the Intention of one Perſon was to tie the other in an indiſſoluble *Bond*; yet the Law ſuperſedes that Obligation, or elſe it is made to no purpoſe, at leaſt, ſo far as it relates to the *Civil Contract*, which is as much as is neceſſary to my purpoſe; for, even that hath an obligation of Conſcience going along with it, which however in this Caſe is ſuperſeded for the Publick Good.

I do not deny, that the chief Intention of thoſe who require *Oaths of Allegiance* to themſelves, is to bind men as faſt as may be to them; and there is a Perſonal Obligation conſequent upon it. But then, I ſay, that the Rule & meaſure of it, is not to be taken from ſuch Intention of the perſons, but from the *General Good*, which was chiefly intended in ſuch things. For, there is a Common Good of humane Society, which Mankind have an obligation to, antecedent to that obligation they are under to particular perſons. For, as Magiſtrates were deſigned for a general Good, ſo the obligation to them muſt be underſtood ſo, as to be ſtill in ſubordination to the main end.

And it is agreed on all hands, That an Antecedent and Superiour Obligation doth void that which is ſubſequent and inferiour, when they contradict each other; elſe an Oath might bind a Man to ſin; which no man will aſſert.

Therefore whatſoever the Intention of the Perſons was, How ſtrict ſoever the Expreſſions may be, if the keeping of the Oath be really and truly inconſiſtent with the welfare of a People, in ſubverting the Fundamental Laws, which ſupport it; I do not ſee how ſuch an Oath continus to oblige: For, there is no Relation of Mankind one to another, but there is ſome good antecedent, which is the juſt meaſure of that Obligation they ſtand in to each other. Thus it is between Parents and Children, Husbands and Wives, Maſters and Servants; and therefore it is moſt reaſonable to be ſo between Princes and their Subjects.

A Vow to God is as solemn a thing as an Oath; but our Saviour declares, if it hinders that Good which Children are bound to take care of with respect to Parents, it ceaseth to oblige. † If Parents, instead of regarding the Good of their Children, do openly design their Ruin, and contrive ways to bring it about; none will say but that they are bound to take care of their own welfare, although such Parents may call it *Obstinate Disobedience*. For, even the Government of Parents, as natural as it is, is not Absolute, but is limited by Reason and the Good of their Children. And when they are of age, they are allow'd to judge of what concerns their welfare, and (if it be necessary) to withdraw from their Parents immediate care, but preserving a due Reverence and Respect to them.

† See Lock Government. lib 26.

The hardest Case we can suppose, is that of *Slavery*, *i. e.* of *Dominion by Force*; but altho' the Law of Nations allows it, yet it is with such limitations, as still shew, That whatever the condition of men be, with respect to one another, there is still a Regard to be had to the Benefit of those who are in subjection to others.

The only thing which makes a state of Slavery reasonable, is, That when men are taken Captive by others, they are at their Mercy; and the giving of life is so great a benefit, as cannot be compensated by any thing less than a perpetual Service; and in consideration of it, the Master is to afford Protection and Maintenance. Still we see all reasonable subjection is in order to some Good of those who are under it; and without it, as *Aristotle* saith, *They are not used as Men, but as Tools*. And it is agreed by the best Writers on this Subject, That if the Slave be kept in Chains, he is under no obligation of Conscience to him that keeps him; but he may find his own way to escape, because he is treated as an Enemy, and therefore hath all the Right of War on his side. But if he yields upon Terms, then he is under Obligation, but it is according to the Terms upon which he yielded himself.

Mr.

Mr. *Hobbs* indeed faith, *That thoſe who ſubmit upon Compact, are capable of no Injury afterwards; becauſe they have given up their Wills already, and there can be no Injury to a willing mind.* But this is very falſe reaſoning; for himſelf grants, That where there is ſuch a Compact, there goes ſome Liberty or Priviledge along with it. And it is not to be imagined, that ſuch who entred into compact for their Benefit, ſhould renounce all right to it when they have done it; and if they have Right, they may be wronged. And in the caſe of the greateſt Slavery, *Natural Equity* was required, and a *Common Right* was ſtill due to Slaves, as Men: So that Nature owns no ſuch thing, as meer *Abſolute Power* in ſome over others, meerly for their own advantage; but all *Reaſonable Power* ſuppoſes Conſent, and a Good to be attained by it. But when it is carried to a contrary end, it is againſt the Intention of Nature, which lays an obligation on ſome men towards others, with regard to a *Common Good*, which cannot otherwiſe be attained.

De Cive c. 8. n. 7.

Arift. Nic. l. 8. c. 13. Sen. de Clem. l. 1. c. 18.

It is not denied by the ſtricteſt Caſuiſts in theſe matters, but that *under a ſtate of uſurpation, notwithſtanding their Oaths to the Rightful Prince, men are bound to do thoſe things which tend to the Publick Safety as well as their own.* But then they found it upon *a preſumptive Conſent of the abſent Prince*; whereas, the true Reaſon is, That Men are in the firſt place bound to promote the Publick Good, and conſequentially, and with reſpect to it, to regard the Will of their Princes, who are appointed by God and Nature for that end. And if ſuch be rendred uncapable of doing it, yet the Obligation on others remains. Whereas, if it depended on the Will of the abſent Prince, his *preſumptive Will* would not be ſufficient; for that can lay no obligation.

But, that the *Publick Good* is the true and juſt meaſure of the Obligation in theſe Oaths, doth further appear, in that the *Oaths* are *reciprocal*. Whereas, if only the Good of the Perſons to whom Oaths of Allegiance are made, were to be

our Rule, then there would be no mutual Oaths. I am not now enquiring how far in *reciprocal Oaths* one Party's failing diſobliges the other, but I am ſhewing, That it muſt be a General Good that is aimed at when both Parties are ſworn to each other; ſo it was in the ſtricteſt *Feudal Allegiance*, the Lord was as much ſworn to the Tenant to protect and defend him in his Rights, as the other was to attend him in his Wars for the ſecurity of his Perſon. And this was certainly founded on a mutual Contract, called by the old Feudiſts *Liga*, and thence *Ligeas* and *Ligeantia*, and ſo our *Allegiance*. The words of *Glanvil* and *Bracton* and the *Cuſtomary* of *Normandy*, are plain, to ſhew the *Reciprocal Obligation* in this Caſe, and the meaſures on both ſides were to be *the Rights, and Cuſtoms, and Laws of the Land*. So that *Allegiance* originally implies a Compact, and is to be meaſured by the *Laws*, which are the Standard of the *Publick Good* of a Country.

Mutua quidem debet eſſe Domini & Homagii fidelitatis connexio, ita quod quantum debet homo Domino ex homagio, tantum illi debet Dominus ex Dominio præter ſolam Reverentiam. *Glanvil.* l. 9. c. 4. *Bracton.* l. 2. §. 2. *Cuſt. Norm.* c. 43.

2*ly*, Having thus in general fixed theſe grounds to proceed upon, I come to the particular examination of the *difficulties* which relate to the preſent *Oaths*; and becauſe we are charged with *Apoſtacy from the Principles of the Church of* England, and that is made the main ground of the deſigned Separation, I would fain know what this Charge is built upon, with reſpect to the Oaths, for that is all we are concerned in. If any particular Perſons have advanced new *Hypotheſes* of *Government*, contrary to the *Senſe* of our *Church*, let them anſwer for themſelves. The Caſe of the Oaths is quite of another Nature.

Here is no *Renouncing the Doctrine of Paſſive Obedience*, or *aſſerting the Lawfulneſs of Reſiſtance*; but the ſingle Point is, "Whether the Law of our Nation doth not bind us to Allegiance to a King and Queen in actual Poſſeſſion of the "Throne,

" Throne, by conſent of the Three Eſtates of the Realm? " and whether ſuch an Oath may not lawfully be taken, " notwithſtanding any former Oath?

And by this very ſtating of the caſe, any one may ſee how impertinent to this purpoſe the Book called the Hiſtory of *Paſſive Obedience* is; the truth is, there are not many paſſages in it which come near the buſineſs; but thoſe that do, contain in them the main difficulties which relate to the Oaths, and therefore I ſhall impartially conſider them. Which are theſe,

I. That they are to the prejudice of a third Perſon.

II. That they are contradictory to a former Oath.

III. That the Perſon to whom they were made, hath given no releaſe or diſcharge from them.

For the firſt we have theſe Teſtimonies; Biſhop *Hall*, p. 46. ſaith, *That a Promiſſory Oath, which is to the certain Prejudice of another man's Right, cannot be attended with Juſtice.*

Biſhop *Sanderſon*, p. 61. *An Oath impoſed by one that hath not a juſt Authority, is to be declined as much as we can; if it be forcibly impoſed, it is to be taken with reluctancy, upon this condition, that the words imply nothing unlawful or prejudicial to the Rights of a third Perſon; for if ſo, we muſt refuſe the Oath at the peril of our lives.*

I grant, it is a Rule among the *Caſuiſts*, That an Oath ought not to be taken *to the Prejudice of a third Perſon*; but ſo it is likewiſe, *That it ought not to be taken againſt the Publick Good*; and theſe two are often put together. *It is a ſin,* faith *Zoeſius, to make a compact to the publick prejudice and injury of another; and an Oath that is converſant about ſuch a matter, is unjuſt, and not to be kept.* So that the *Right of a Third Perſon* is not to be taken as diſtinct from the *Publick Good*; for, if it be inconſiſtent with it, there is no ground to ſet up a *perſonal Intereſt* againſt a *General Good*. And ſo far a *Miſchief is better than an Inconvenience*; for it is a ſtanding Zoëſ. in Dig. l. 12. Tit. 2. n. 66

Jus publicum privatorum pactis mutari non potest.

ing Rule in Reason as well as Law, *The publick Right cannot be changed by the Contracts of particular Persons*, ff. *l.* 2. *tit.* 14. If a Man takes an Oath to a *third Person*, to do something which the Law forbids; although *he suffers by it*, yet it is concluded, That such an Oath doth not bind, because the *Publick Good* is to be preferred, *As often as a Compact doth depart from the Common Right, it ought not to be kept; nor is an Oath requiring it to be observed.* ff. *l.* 2. *tit.* 14. *Juris Gentium* §. 16. And again, *An Oath against the Force of Law and Authority of Right is of no moment.* What is the Reason that an Oath doth not bind against the Law? Is not the Authority of God above that of Men? No doubt of it; but since God hath established Government and Laws for a *Publick Good*, their meaning is, That Men cannot by any Act of their own be bound to overthrow it, in what solemn manner soever it be done.

It is resolved in the Text of the Canon Law, in the *King of* Hungary's *Case*, *That an Oath taken against the good of the Kingdom, doth not oblige*, *de jurejur. c.* 33. *intellecto*; although it were to the Prejudice of others, because it was *in Præjudicium Regni sui, to the Prejudice of his Kingdom*; which was more to be regarded; and because it was contrary to the Oath which he took at his Coronation, *Jura Regni sui illibata servare, That the Rights of the Kingdom were to be preserved inviolable.*

Sylvester in sum. 6. *juram.* 4. *n.* 16. saith roundly, *That an Oath doth not bind against the Publick Good in the first Place; but if it be for a Private Benefit principally, and consequentially for the Publick, then the Oath holds*; because still the publick Good is to overrule in all such Oaths.

If a Man swears to keep a Secret, and that be to the *Prejudice of a third Person*, the *Casuists* say, That Oath doth not oblige; how much less, where the Publick Interest and safety is concerned?

And

And it is generally agreed by our Divines, That an Oath of Secrecy, where the *Publick Safety* is in Danger, doth not bind; as in *Garnet's Case*, who pleaded his Oath for not discovering the *Gun-powder-Treason*. Now if an Oath doth oblige against the common Good, *Garnet* made a good Plea; for his Discovery was to the *Prejudice* of others: but if his Plea was naught, then the *Publick Good* doth make the Obligation of an Oath to cease.

Suppose a Man makes a Contract with another, who thereby acquires a Right; yet if that Contract be against the common Good, and be confirmed with an Oath; that Oath doth not oblige, saith *Bonacina*, *de contract. disp. 3. q. 1. p. 1.*

There are two sorts of Laws, saith *Suarez*, *which respect the Publick Good*; some which concern *ipsum statum Reipub. & utilitatem communitatis*; the general State of the Commonwealth, and Benefit of the Community: Others which concern *Bonum commune mediante privato*; that common Good which results from every Man's Good: *against the former*, he saith, *an Oath cannot oblige*; but in the latter, it may, as far as concerns his own Benefit. *Suarez de juram. l. 2. c. 26. No Obligation, though sworn to, is of any Force against those things which are owing to God and the Kingdom*, saith *Zeilerus* in his Notes on *Grotius de jure B. & P. l. 2. c. 13. §. 7.*

From all this it appears, That if the *Right of a third Person* be inconsistent with the *publick Good*, such an Oath doth not oblige. And it is to be observed, That those Persons, whose Testimonies are alledged, never put the Case of the Right in a third Person and a Publick Good standing in Competition; and therefore they do not reach our present Case.

II. It is alledged, That this Oath is contradictory to a former Oath.

Bishop Hall again, History of *passive Obedience*, p. 46. *No Oath is or can be of Force that is made against a lawful Oath formerly*

formerly taken; ſo that he that hath ſworn Allegiance to his Sovereign, and thereby bound himſelf to maintain the Right, Power and Authority of his ſaid Soveraign, cannot by his ſecond Oath be tied to do ought that may tend to the infringement thereof; and if he hath ſo tied himſelf, the Obligation is, ipſo facto, *void and fruſtrate.*

No Doubt, if the firſt Oath continues in Force, the ſecond is void, ſo far as it contradicts it. But we ſay, The former Oath is not in Force, as it is repugnant to the publick Good, and ſo the ſecond may be taken without any Contradiction: And if the Doctrine there laid down holds in our Caſe, I cannot ſee how it is conſiſtent with the former Oath, for any ſuch Perſons to continue under the Protection of the preſent Government, or to enjoy the Benefit of the Laws; or to take out a *Writ* in their Names, any more than to pray for them; the one being owning their Authority as much as the other.

III. Becauſe the Perſon who had the Right hath given no Releaſe.

For this Dr. *Hammond* is quoted, in his *Practical Catechiſm, Hiſtory of Paſſive Obed.* p. 54. S. *but was not* Tiberius *an Uſurper, and yet Chriſt ſaith,* Render to Cæſar the things that are Cæſar's. C. Julius Cæſar *wreſted the Power out of the Hand of the Senate; but before the Time of* Tiberius *the Buſineſs was accorded between the Senate and the Emperors, That the Emperors now reigned unqueſtion'd, without any Competition from the Senate; which Caſe,* he ſaith, *is diſtant from other forcible Uſurpations, where the Legal Sovereign doth ſtill claim his Right to his Kingdoms, and to the Allegiance of his Subjects, no way acquitting them from their Oaths, or laying down his Pretenſions.*

To clear this Matter, I ſhall enquire into two things.

1. How far a Diſcharge is neceſſary from the Perſon concerned.

2. How

2. How far *our Saviour*'s Rule holds in our Caſe?

As to the former, I ſay, The Reſolution of Conſcience in this Caſe doth not depend upon the Will and Pleaſure of the Perſon to whom the former Oath was made, but upon the Grounds on which it was made, and from which it had its force to oblige: And if thoſe ceaſe, the Obligation of the Oath ceaſes together with them. And whether they do or not, no particular Perſon is ſo fit to judge as the three Eſtates of the Realm; as I ſhall now prove from ſeveral remarkable Inſtances to this purpoſe in *our Hiſtories* and *Parliament Records*; whereby I ſhall make it appear, That when a Diſpute hath happened about the *Right* of *Succeſſion*, and to whom the *Oaths of Allegiance* were to be made, they have looked on it as their proper Right, To limit the Succeſſion, and to determine the Oaths.

Under the *Britiſh Government*, we find a conſiderable Inſtance to our Purpoſe; *Vortigern* the Britiſh King had entered into a *Secret League*, To bring over the *Saxons*; upon which *the Great Men of the Nation deſerted him, and choſe* Vortimer *in his room.* Here it is plain, They thought the introducing a Foreign Power, a ſufficient Diſcharge of their Obligation to him, it being ſo directly contrary to the *publick Good* of the Nation, although *Vortigern* gave them no Diſcharge.

A. G. 454. Magnates Brit. Regem Vortigernum penitus deſerentes, unanimiter filium ſuum in Regem ſublimaverunt. Mat. Weſt. p. 83.

In the *Saxon* Times, *Sigebert* King of the *Weſt Saxons*, was complained of for *Miſgovernment, and for changing their Laws* for his own Ends; but when he perſiſted in his Way, there was a Convention of the Nobility and People, (*convenêrunt Proceres Regni cum Populo univerſo*, ſaith

Matt. Weſtminſter) and they declared themſelves free from Allegiance to him, and choſe *Kineulfus* in his room.

Cum autem modis omnibus male tractaret eos, legeſque anteceſſorum ſuorum propter commodum ſuum, vel depravaret, vel mutaret. Matt. Weſt. A. D. 756. H. Huntingd. l. 4. p. 196.

In the Kingdom of *Mercia Beornredus* for not governing by the Laws, was by a *Convention* of the Nobility and People ſet aſide from the Government, and *Offa* choſen King; who was of the Royal Stem, but not the next Heir; and ſo *William* of *Malmsbury* obſerves, in the *Weſt Saxon Kingdom* after *Ina, That no lineal Succeſſion was then obſerved; but ſtill ſome of the Royal Line ſat in the Throne.* And of *Ina* himſelf, *That he was rather put into the Throne for his Virtue, than by Right of Succeſſion.*

A. C. 758. Gen. de Regno Merciorum, contra Regem ſuum Beornredum inſurgens, pro eo quod Populum non æquis legibus, ſed per tyrannidem gubernaret, convenerant in unum omnes, tam nobiles quam ignobiles, & Offa Duce ipſum à Regno expulerunt, Mat. Weſt.

Nam & ipſe Brithricus & cæteri infra Inam Reges licet Natalium ſplendore gloriantes, (quippe qui de Cerdicio originem traherent) non parum tamen à lineâ regiæ ſtirpis exorbitaverant, Will. Malmsb. de Geſtis Reg. Angl l. 1. c. 2.

Regnum per Inam novatum qui Cinegiſli ex Fratre Cuthbaldo pronepos magis pro inſitivæ virtutis induſtria, quam ſucceſſivæ ſobolis proſapia in Principatum aſcitur. id. ib.

Matth. Weſt. A. D. 854, 867. *Æthelulphus*, King of the *Weſt Saxons*, went to *Rome*, and there crowned *Alfred*, his youngeſt Son, King, and married the King of *France*'s Daughter in his Return, and made her Queen, againſt their Laws; for which Reaſons he was excluded his Kingdom: His eldeſt *Son* and *Alſtan*, Biſhop of *Shireburn* being at the Top of this Act of Excluſion; and he came back only upon the Terms of receiving his Son into a Share of the Kingdom: Which ſhews, That they looked on the Laws as the Meaſure of their Allegiance; and where thoſe were openly broken, that it was in their Power to transfer it.

If

If our Allegiance cannot be transferred by the States of the Realm, it muſt be becauſe (as ſome think) by the fundamental Conſtitution of this Kingdom we are bound in *Allegiance* to the *next right Heir in a Lineal Succeſſion*; but I find no ſuch thing in the *Saxon Times*: for although generally they kept to the *Royal Line*, yet not ſo, but that when it appeared to be much more for the *Publick Good*, they did not ſtick upon the Point of *Proximity*. I ſhall not meddle with the Kingdom of the *Northumbers*, which alone was *originally Elective*, as appears by *Matt. Weſtminſter*; and wherein there happened ſo great Diſorders and Confuſions, that at laſt *William* of *Malmsbury* ſaith, *None could be perſwaded to accept of the Kingdom*; and ſo it continued thirty three Years, till at laſt *Egbert* took it into his Hands; and ſo it became a Part of the *Engliſh Monarchy*; which was eſtabliſhed in him.

Mat. Weſt. p. 101. Bromton p. 862. W. Malmſbur. l. 1. c. 3. p. 14.

But if by the fundamental Conſtitution, *Allegiance* were indiſpenſably due to the next *Rightful Heir* in this Monarchy, how came *Athelſtan* to be crowned, *magno conſenſu Optimatum*, ſaith *Malmsbury*, when he was not the Rightful Heir? Some ſay (from an old Monk in *Malmsbury*) *That his Father left him the Crown by his Teſtament*; (which doth not clear the Difficulty as to the inviolable Right of *Succeſſion* by the *Conſtitution*). But this cannot be true, for his elder Brother *Elwardus* died after his Father; and none pretend that his Father diſinherited him: And if *Athelſtan* were lawful Heir, what made him to diſpatch his Brother *Edwin* out of the way, and to build two Monaſteries for Expiation of that Guilt? How came *Alfred* to oppoſe his *Election*, as being *illegitimate*, as *Malmsbury* confeſſes? But *Matt. Weſtminſter* gives the Reaſon, The Times were then difficult, and *Edward*'s other Sons were too young to manage the Government, and therefore they ſet up *Athelſtan*, as one fit for Buſineſs.

Mat. Weſt. A. D. 934. A. D. 939.

How came *Edred* to ſucceed *Edmond*, and not his Sons *Edwin* and *Edgar*? *Matt. Weſtminſter* and *Bromton* give the ſame Reaſon; They were uncapable by reaſon of their Age, *Repugnante illegitimâ ætate, Patri ſuccedere non valebant.* *Florence* of *Worceſter* ſaith, The *Northumbers* ſware Allegiance to *Edred*; and he ſaith, *He was next Heir*, and yet there were two Sons of *Edmond* before him; for he confeſſes, That they were the Sons of *Edmond* and *Algiva* his Queen.

Mat. Weſt. A. 946. Bromton. p. 862. Flor. Wigorn. A. 949.

After the Death of *Edred*, the eldeſt Son of *Edmond* ſucceeded; but being found under a *Moral Incapacity*, (for in *Florentius* his Words, and *Matt. Weſtminſter*, *In commiſſo Regimine inſipienter egit*) he was ſet aſide, as to all the Government beyond *Thames*, and *Edgar* put into it: And not long after into the whole Kingdom, by general Conſent.

A. 957.

How came a Diſpute to happen about the Election, after the Death of *Edgar*, between his eldeſt Son *Edward*, and *Etheldred* his youngeſt? I lay no Force on his Mother's Endeavours to advance him; but if there had been ſuch an unalterable Right of Succeſſion, there had not been any Colour or Pretence for it; eſpecially ſince it is ſaid, That his Father declared his Mind, That the elder ſhould ſucceed. But ſaith *Florentius Wigorn.* There was a great Contention among the great Men, about the Choice of the King: How could there be any Diſpute, if they knew the Conſtitution of the Kingdom to be, That the next Heir muſt inherit the Crown; and that thoſe are perjured who transfer their Allegiance?

A. 975.

Florent. Wigorn. A.D. 1016.

After the Death of *Ethelred*, the Nobility and People were divided, ſome chuſing *Canutus* the *Dane*, and ſwearing *Allegiance* to him; others to *Edmund* the Son of *Ethelred*.

The

The former pleaded for themſelves, That *Ethelred had broken his Faith with them, and therefore they deſerted him, ſo as he was fain to fly into Normandy*; and that *Edmond* was not his *legitimate Son*. W. Malm. l. 2. p. 35. 2.

Matt. Weſtminſter ſaith, *That the greateſt part of the Nation, Clergy as well as Laity, did ſwear Allegiance to* Canutus; *without any Diſcharge from* Ethelred, while living, or his Son after him. Mat. Weſt. A.D. 1013, 1015, 1016

After the death of *Canutus*, a new difference aroſe about the Succeſſion; ſome were for *Harold* his ſuppoſed *Son* by *Algiva*, others for *Hardecnute*, his Son by *Emma*. If the lineal Succeſſion were a part of our *Conſtitution*, How come ſuch perpetual Diſputes to be concerning it? For, if it had been owned as a Fundamental Law, the Right of Succeſſion muſt have been clear beyond Diſpute. But *Reaſon of State* and the *Publick Intereſt* ſtill over-ruled this matter, and ſo *Ethelred*'s Sons by *Emma*, who were the true Heirs by *Legal Succeſſion*, were ſet aſide, and *Harold*, being upon the Place, and ſo beſt able to manage the Affairs of the Kingdom, carried it. A. 1035.

Hardecnute being dead, how came the baniſht Sons of *Edmund Ironſide*, if he were lawful Heir, not to be ſent for to ſucceed? If *Edmund* had no good Title, how was the Right of Succeſſion then preſerved? How could Allegiance on theſe Principles be ſworn to him? If he had a good Title, How could the Oaths be taken to *Edward* the *Confeſſor*, when the Heirs of *Edmond Ironſide* were living? I perceive ſome, to ſalve the Succeſſion, make the Mother of *Edmond* to have been *Ethelred*'s firſt Wife, and call her *Elgiva Duke Thored*'s *Daughter*; but *William Malmsbury* ſaith, *She was ſo obſcure a perſon, that ſhe was not known; and that* Edmond Ironſide *made up what was wanting in the management of his Father, and the Quality of his Mother*. And the ſame is ſaid Wil. Malm. l. 2. p. 49.

by

Mat. West. A. 1015. Florent. A. 102. Append. 7. ad vit. Alf. Bromton inter 10. Script. p. 877.

by *Matt. Westminster*. *Florentius Wigorn.* shews the reason of the mistake; for he saith, That *Emma*, *Ethelrede*'s *Queen*, was in the *Saxon* Language called *Algiva*; and so, out of two Names, they have made two Queens. *Bromton* leaves the matter in Dispute, and saith some affirm, *The Mother of* Edmond *was betrothed to* King Ethelred, *and was the Daughter of Count* Egbert: Others, That she was a Stranger and a Concubine. Now, if a Man's Conscience be strictly ~~bid~~ tied in such Oaths of *Allegiance*, to the *Right Heir in a lineal Succession*, what satisfaction can he have as to the taking them, since he is then bound to satisfie himself in the strict Justice of a Title? For, if *Edmond*'s Mother was not married, he had no Title, and no Oath of Allegiance could be taken to him; and whether he was married or not, for all that we can perceive, there was a great doubt at that time, and so continued. And, it is not easie to determine what is to be taken for Marriage in a Prince, unless the Law be the Rule. And, if the Law determines the nature of Contracts in Princes, why not as well the Obligation of Subjects? For, if there be no Rule, it is not possible to satisfie Conscience in the Niceties of Titles; if there be a Rule, the general Consent of the People, joined with the Common Good, seems to have been that which our Ancestors proceeded by.

I do not hereby go about to set up the *Power of the People over Kings*, which is in effect to overthrow *Monarchy*; for then the whole *Soveraignty* lies in the People, and *Kings* are but their *Servants*: And so there is but one sort of Reasonable Government, *viz.* that of a *Commonwealth*. Whereas, from the eldest times, the *Rights* of *Soveraignty* have been placed in *single Persons*, before any *Popular Governments* were known; and Monarchy hath been ever esteemed a distinct and a reasonable Government, especially where it is limited by Laws, and those Laws made by the Consent of the People,

People, *i. e. by the Three Eſtates of the Realm*; which are together the true Repreſentatives of the People.

I ſee no neceſſity of going about to undermine the *Monarchy*, that I may come at a reſolution of the preſent caſe; for, I take Ours to be a true *Original Monarchy*, eſpecially after the Rights of the leſſer Monarchs were ſwallowed up or delivered into that of the *Weſt-Saxon* Kings. And farther, I do not ſtick to affirm, That it was *Hereditary*, where the *Right of Succeſſion* and the *Publick Good* did not interfere; *i. e.* where there was not a *Natural* or *Moral Incapacity*: a *Natural*, as in the Sons of the elder *Edmond*, when *Edred* was made King before them; a *Moral*, as when *Edgar*'s elder Brother was ſet aſide for his *ill Government*, by one half of the Nation, and the other never diſputed the matter with them; and when *Ethelred* was ſo far deſerted, that he went into *Normandy*, and was recalled upon Promiſe of better Government. *Si ipſe vel rectius gubernare, vel mitius eos tractare vellet*, are the words in *Florentius*; and to the ſame purpoſe *Matt. Weſtminſter*, and *Bromton*, and *Malmsbury*: *H. Huntingdon* adds, That he promiſed *omnia Rege & Populo digna*; all things worthy of the KING and People. Theſe things I mention to ſhew, That although this were *a true & ſucceſſive Monarchy* in ordinary courſe; yet where the *Publick Good* was by the *Eſtates* of the Realm judged to require it, they thought it no *Perjury*, or *Breach of Faith*, to transfer their Allegiance, although it were without the Conſent of the actual Governour, or the next lineal Heirs.

Florentius. Wigor. A.D 1014.

H. Huntin. l. 6. p 207. 2.

Having thus far cleared this Point, as to the *Saxon Conſtitution* of our Government, I come to that of the *Norman*; and here I ſhall not go about to ſhew how broken the Succeſſion was by *Force* and *Faction*, but what the Judgment of the Nation was, as to the transferring Allegiance. And,

And, the firſt Inſtance I ſhall bring, is in the Caſe of the Oath taken to *Maud* the Daughter of *Henry* the Firſt, in the One and Thirtieth year of his Reign; and there is no queſtion, but he deſigned her to ſucceed him; *Legitimâ & perenni ſucceſſione*, as *Malmsbury*'s words are; but *Stephen*, (who had before ſworn Allegiance to her) watched his opportunity, and by the help of a Party made by his Brother, (the *Biſhop* of *Wincheſter*) he was Crowned KING; and although at firſt, *Malmsbury* ſaith, *but three Biſhops, and very few Noblemen*, joined with him, yet he ſoon after ſaith, *That moſt of them went in to him*: And even *Robert* of *Glouceſter*, King *Henry* the Firſt's natural Son, took an Oath to him, but with the condition of his preſerving his Honour and Covenants. There are ſeveral things worthy our obſervation in this Affair, with reſpect to Oaths of *Allegiance*.

Malmsb. hiſt. Novel. l. 1. p. 100, 105. 2.

(1) That thoſe who excuſe them from *Perjury*, who had Sworn *Allegiance* to *Maud* before, do it upon this account, Becauſe it is ſaid by *Rad. de Diceto*, *That* Hugh Bigod *ſware, that King* Henry *the Firſt, on his Deathbed, diſinherited his Daughter, and made* Stephen *his Heir*. Suppoſing the Story true, what is this to the Diſcharge of the Oath as to *Maud*; (for the Oath was not made to *Henry* the Firſt, but to his Daughter, and her Right was chiefly concerned in it.) If this hold, an *Oath* of *Allegiance* may ceaſe, without diſcharge from the Party to whom it is made. And ſo the *Archbiſhop* of *Canterbury*, and the Biſhops of *Wincheſter* and *Salisbury*, as well as the Nobility, thought themſelves at liberty to take a New Oath of Allegiance, without a Releaſe from the Party concerned in the former Oath.

(2) That

(2.) That upon the Agreement between K. *Stephen* and *H.* 2. *Maud* her ſelf was ſet aſide, and *Stephen* was to continue King for his Life, and *H.* 2. to ſucceed him. Now if Oaths of Allegiance muſt not be interpreted by the *Publick Good*, here are inſuperable Difficulties as to the Obligation of theſe Oaths. For the Allegiance was transferr'd from the right Heir to an Uſurper, as *Stephen* muſt be owned to have been by thoſe who deny that Allegiance can be transferr'd from the right Heir. And they muſt continue Allegiance to the Uſurper for his Life; which is repugnant to the Nature of our Conſtitution, if it be founded in a *Lineal and Legal Succeſſion*. And again, *Maud*, to whom they had ſworn, is ſet aſide, and the Reverſion of the Crown is entailed on her Son, although ſhe was living. *Forteſcue*, in a Manuſcript-Diſcourſe about the *Title of the Houſe of Lancaſter*, ſaith, this was done in Parliament, *Communi Conſenſu Procerum, & Communitatis Regni Angliæ. Rad. de Diceto*, who lived nearer the time, ſaith no ſuch thing; but *Forteſcue* appeals not only to the *Chronicles, but to the Proceedings of Parliament*, for it. And *Matt. Weſtminſter* and *Paris* ſay, The Right of *H.* 2. was declared by K. *Stephen in Conventu Epiſcoporum, & aliorum de Regno Optimatum*; which was the Deſcription of a Parliament of that time; for, as yet, the *Baronage* repreſented the Nation. *Gervaſe* ſaith, *The Great Men were ſummoned to perfect the Agreement, by giving their Aſſent to it, and confirming it by their Oaths.* *Forteſcue* ſaith further, that *H.* 2. *was crowned King in the Life of his Mother, (who lived to the* 13 *of H.* 2.*) by the general Conſent of the Kingdom.* Which ſhews how far the *Publick Good* was thought to be the Meaſure of the Obligation of theſe Oaths. For *Gul. Neuburgenſis* ſaith, That the *Bonum Publicum* was the Foundation of this Agreement. And *Matt. Weſtminſter*,

Rad. de Diceto, A. D. 1153.

Matt. Weſtm. A. 1153. Mat. Pariſ. ib.

Gervaſ. A. D. 1153.

Gul. Neoburg. l. 1. c. 30.

Matt. Weſtm. S. 1153. *minſter, That the King and the Lords did all ſwear to it, and a ſolemn Charter was made of it, and kept in a moſt ſecure Place.* And thus the Oaths of Allegiance were continued to one that had no Right for his Life; and made to one who pretended to no Right, but after his Mother, who was ſet aſide in this Agreement. So that here were three Oaths of Allegiance at once, that to *Maud* the Empreſs, that to K. *Stephen*, and to *H.* 2. and yet the *General Good* of the Nation muſt give an equitable ſenſe of theſe Oaths, or there muſt be *Perjury* on all ſides. For thoſe who had firſt ſworn to *Maud*, could not tranſfer their Allegiance on any other account, either to *Stephen*, or *H.* 2. during her Life. For we never read that ſhe was preſent at the Agreement, or reſigned her Right to the Crown.

The next Inſtance I ſhall produce, is in the Oaths that were taken during the Controverſies between the Houſes of *York* and *Lancaſter*. Which was not ſo plain a Caſe as Men commonly imagin; and in Truth, if the juſt legal Title be the only Rule of Conſcience in this Caſe, it was hard to take the Oaths on either ſide. For, as on the one ſide, a lineal Deſcent was pleaded from the Daughter of the Duke of *Clarence*, who was elder Brother to *John Duke of Lancaſter*, from whom by Marriage the Duke of *York* claimed his Title; ſo, on the other ſide, it was objected, that there was no ſufficient Evidence of the Legitimacy of *Philippa* Daughter to the Duke of *Clarence*; becauſe, as *Forteſcue* obſerves, the Duke of *Clarence* was abroad from before the time of her Conception till after her Birth, and that he never owned her Mother after; that ſhe never aſſumed the Arms of the Duke as her Father, nor thoſe deſcended from her, till the Duke of *York* pretended to the Crown; that *E.* 3. made an Entail of the Crown upon his Heirs Male;

Male; (of which I have ſeen a written Account as old as the time of *H.* 6. which not only affirms the Abſence and Divorce of the Duke of *Clarence*; but that *E.* 3. ſeized all his Lands into his Hands, and in Parliament ſoon after entailed the Crown on his Heirs Male, and that his Daughters there preſent agreed to the ſame.) But beſides they pleaded, that ſo long a Preſcription as the Houſe of *Lancaſter* had of above threeſcore years, was allowed by the *Jus Gentium*, to purge the Defects of the firſt Title: Theſe are things which deſerved Conſideration againſt ſuch a meer lineal Deſcent as the Houſe of *York* inſiſted upon. And againſt the Houſe of *Lancaſter*, the Intruſion of *H.* 4. upon the Depoſition of *R.* 2. is an invincible Objection to ſuch as found Allegiance on the Right of Succeſſion.

But that which I lay the greateſt weight upon, is the Way of ending this Difference in *Parliament*, which hath ſeveral remarkable things in it:

(1.) That the Duke of *York*, notwithſtanding his Title, takes an *Oath of Allegiance* in Parliament to *H.* 6. during his Life; reſerving to himſelf the *Right of Succeſſion* after him. For he ſwears *to do nothing to the Prejudice of his Reign or Dignity-Royal, nor againſt his Life or Liberty; and that he would to the utmoſt of his Power, withſtand all Attempts to the contrary.* The ſame *Oath* was taken by his Sons *Edward* Earl of *March* (afterward *E.* 4.) and *Edward* Earl of *Rutland*. Was this a lawful Oath or not? To ſay it was unlawful, is to reflect on the Wiſdom of the *Three Eſtates*, who looked on this as the beſt Expedient for the Publick Good, as being the way to prevent the Effuſion of Chriſtian Blood. And it is not eaſy to prove ſuch an Oath unlawful; as containing nothing unlawful, nor to the Prejudice of a third Perſon, when he who was chiefly concerned voluntarily

Rot. Pa l. 39. *H.* 6. n. 21.

luntarily took it. If it were a lawful Oath, then an Oath of Allegiance on the account of *Poſſeſſion*, is a lawful Oath. For the matter of Right is not mentioned in it, and *Richard* Duke of *York* did not renounce the opinion of his own Right hereby, (whether true or falſe) but did bind up himſelf to do nothing to the Prejudice of the Royal Dignity of *H. 6.* and yet he look'd on him as meer Poſſeſſor of it; therefore in his Judgment and the Parliament's, an Oath of Allegiance may lawfully be taken, on the account of the *Poſſeſſion* of the *Crown*, although Perſons be not ſatisfied of the Right of it.

N. 20. The Words of his Agreement are remarkable to this Purpoſe, as they are to be found in the *Parliament-Rolls*. *The ſaid Title notwithſtanding, and without Prejudice of the ſame, the ſaid* Richard *Duke of* York *tenderly deſiring the Weal, Reſt and Proſperity of this Land, and to ſet apart all that might be trouble to the ſame; and conſidering the Poſſeſſion of the ſaid King* Henry *the ſixth, and that he hath for his time be named, taken, and reputed King of* England *and* France, *and Lord of* Ireland, *is content, agreeth and conſenteth, that he be had, reputed and taken King of* England *and of* France, *with the Royal Eſtate, Dignity and Preeminence belonging thereto, and Lord of* Ireland, *during his Life natural; and for that time the ſaid Duke, without hurt or prejudice of his ſaid Right and Title, ſhall take, worſhip and honour him for his Sovereign Lord.* Here was certainly an Oath taken to a King, whom the Perſon taking it looked on only as a King *de facto*, and not *de jure*; and yet this Oath was taken and allowed, nay contrived in Parliament; and that for no leſs an end, than for the *Weal, Reſt, and Proſperity of the Land*, i. e. for the Publick Good.

It may be ſaid, *That the Caſe is different; for* Richard *Duke*

Duke of York *parted with his own Right; but we cannot with anothers, which we have ſworn to preſerve.*

I anſwer, That he did not look on ſuch an Oath as parting with his Right, but as a thing fitting to be done on the account of *Poſſeſſion* for the Publick Good. And ſo may others take ſuch another Oath of Allegiance, wherein there is no Declaration as to Right, but the ſame things required, which the Duke of *York* promiſed in his Oath to *Hen.* 6.

But Allegiance is not due but where there is a Right to claim it; and that cannot be, where there is no Right to the Crown.

I anſwer, That an Oath of Allegiance may be two-fold: 1. *Declarative of Right*; and in that caſe none can be owned to have Right, but he that hath it.

2. *Submiſſive Allegiance*; where no more is required than is contained in the Duke of *York*'s Oath, and yet he declared *this was no Prejudice to his Right. But it may be ſaid, He declared ſo much before he took the Oath, and ſo gave the Senſe in which he took it.*

I anſwer, That

His putting in his Claim, and his Title being allow'd after the King in being, had been ſufficient; but in our caſe there is no need of a *Declaration*, ſince the declaratory part is left out; which is a fuller Declaration of the ſenſe of the Oath, than our Words can make.

But to proceed;

(2.) The firſt Objection the *Parliament* made to the Duke of *York*'s Claim was, from *the Oaths they had taken to* H. 6. To which the Duke of *York* gave a large Anſwer, that *Oaths muſt not bind againſt Truth and Juſtice.* But this was to take it for granted, that he had the Truth and Juſtice of his ſide, whereas there was a long Poſſeſſion of threeſcore Years againſt him; ſurely Matters

ters of Fact which were neceſſary to the diſproving his Title, were then ſo far out of Memory, that it was impoſſible to make clear Evidence about them; and others were not examin'd, as whether the Duke of *Clarence* were abſent ſo long from his Wife abroad, when *Philippa* was born? Whether one Sir *James Awdely* ſuffer'd about it? Whether he was divorced from her upon it? Whether *E.* 3. after the Death of the Duke of *Clarence*, did entail the Crown on his Heirs male? Whether upon the Depoſition of *R.* 2. the Claim of Right on behalf of the Duke of *Clarence*'s Heir, ought not to have been made? How far *Edmond Mortimer*'s owning the Title of *H.* 5. and the Duke of *Cambridge*'s Attainder did affect him? Whether he had not renounced his own Pretentions, by owning *H.* 6. to be *his Supream* and *Soveraign Lord*, as he had often done in a moſt ſolemn manner, particularly in his Oaths at the Altar at St. *Pauls*, which is to be ſeen in the *Book of Oaths*, p. 146. and elſewhere. But at that time, *H.* 6. was under the Power of the Duke of *York*; and that was a very unfit time to clear a ſinking Title.

But however the Lords in Parliament were concerned for their *Oaths* to *H.* 6. and propoſed the former *Expedient*, not only for the publick Welfare, but in regard to their *Oaths*, notwithſtanding that they allow'd the *Duke's* Title to be good. Their Words are, *It was concluded and agreed by all the ſaid Lords, that ſince it was ſo, that the Title of the ſaid Duke of* York *cannot be defeated, and in eſchewing the great Inconvenience that might enſue, to take the Mein above rehearſed, the Oaths that the ſaid Lords had made unto the King's Highneſs at* Coventry *and other places ſaved.*

From whence it is plain that they look'd on their *Oaths to Hen.* 6. as conſiſtent with owning the Right

Right to be in the Duke of *York*; and that *Poſſeſſion* was a ſufficient Ground for continuing their Oaths.

(3.) In 1 *E.* 4. where the Right and Title of the D. of *York* is moſt amply ſet forth, yet there this Agreement, 39 *H.* 6. is recited, and the Proceedings againſt *H.* 6. are grounded upon his Breach of it. Which ſhews farther that thoſe *Parliaments* which did aſſert the *Right of Succeſſion* higheſt, (among which, this of *E.* 4. ought to be reckon'd) yet it was never diſputed, whether thoſe who had taken the Oaths to *H.* 6. were *perjured*; for they look on the *Poſſeſſion* of the *Crown* as a ſufficient Ground for the *Allegiance* required.

But it may be ſaid, *That from hence we ſee that he was look'd on as having the beſt Title, who had the beſt Right by lineal Succeſſion.* I anſwer, that we are not enquiring into *Titles*, but ſearching into the Reaſons and Meaſures of *Oaths* of *Allegiance*; and whether thoſe do require full Satisfaction about the beſt Title? Or ſuppoſing one unſatisfied about that, he may not yet be ſatisfied in taking ſuch an Oath as the D. of *York* and his Sons did?

But ſuch Precedents prove nothing, unleſs they be agreeable to our Laws and Conſtitution. Yes, a great deal, while we are enquiring into our *Legal Conſtitution*; and we find ſuch things allowed in *Parliaments*; and not only ſo, but in ſuch *Parliaments* which allow'd not the Title of the King to whom thoſe Oaths were made.

Our Law owns no King meerly as in Poſſeſſion, but the Right Heir is the legal King, whether in Poſſeſſion or not. Our Law does own a King in Poſſeſſion, if *Treaſon may be committed againſt Him*; and for this we have not only the *Authority of Sir* E. C. but of the *Year-Books*, 9 *E.* 4. Where it is deliver'd for Law at that time; and with a particular Reſpect to *H.* 6. *Et home ſera arraigne*

arraigne de Treaſon fait a dit Roy. H. and therefore Sir *E. C.* had good Authority for what he ſaid; and that not in the Reign of a King *de facto*, but when a King thruſt out another for want of Right, and derived his whole Right from a *lineal Succeſſion*. *Bagot's Caſe* goes farther than *Grants and judicial Proceedings of a King de facto*; for therein it is declared Treaſon to compaſs the Death of a King *de facto*; and it is very abſurd to imagine Treaſon againſt one whom the Law doth not own: for Treaſon is a high Violation of the Law, and how can the Law be violated againſt one whom the Law doth not own? Beſides, in *Bagot's Caſe* there is a diſtinction made between *a meer Uſurper, and one on whom the Crown is ſetled by Parliament*; and ſo *H. 6.* is denied to be a meer Uſurper. *Et ſix le dit Roy H. de fait Merement, come Uſurper, Car le Corone fuit taille a luy per Parliament.* So that by our Conſtitution a great Deference is to be ſhew'd to the Judgment of *the three Eſtates* in matters that concern the *Right of the Crown*; Or elſe, an Entail made by them could make no difference; but the whole Reſolution muſt be into the *lineal Deſcent*. And thus I look on the Statute, 11 *H. 7.* as *agreeable to our Conſtitution*; for if it be *Treaſon* to compaſs the Death of a King *de facto*, there is great Reaſon there ſhould be Indemnity for thoſe who act for Him.

But what doth this ſignify to the Conſciences of Men? Very much, if they are to be ſatisfied by our Conſtitution. I grant meer *Indemnity* doth not clear a Man's Mind; but its agreeableneſs to former Proceedings and Judgments ſhews how far our Conſtitution allows us to go, and that there is no Argument from thence which can hinder the Satisfaction of Conſcience ſo far.

But

But ſuppoſe a King de jure *be in Poſſeſſion of this Act, and another comes and diſpoſſeſſes Him, and ſo is King* de facto, *Doth this Law indemnify thoſe who Fight againſt the King* de jure *for the King* de facto?

Whoſoever is in actual and quiet Poſſeſſion of the Crown, by *Conſent of Parliament*, hath the Right to challenge the Benefits of this Act for thoſe who ſerve Him. But I do not ſay, that this Act gives any Man Right to oppoſe a *Rightful King*; but it only provides for the Indemnity of thoſe who aſſiſt the preſent Poſſeſſor, although another had the Right by Deſcent. For, after the D. of *York*'s challenging the Crown by Right of Succeſſion againſt the Poſſeſſor, there were two Parties in the Nation, the one was for the *Right* of *Succeſſion*, and the other for the *Right* of *Poſſeſſion* by a *National Conſent*. And the Diſputes between theſe two continued as long as the Differences between the Houſes of *York* and *Lancaſter* laſted. When *H.* 7. was ſetled in the Throne, without regard to the *Right* of *Succeſſion*, although there was a general Submiſſion, yet there was ſtill a great Diſſatisfaction in the *York Party*; which occaſion'd all the Diſturbances of *H.* 7*th*'s Reign, from ſetting up an Heir of the Houſe of *York*. (And Sir *William Stanly* was gained to that Party, which coſt him his Life.) And they went ſo far as to conclude it *Treaſon* to ſtand by the Poſſeſſor againſt the *next lineal Heir*. Which I take to have been the true Occaſion of the Statute 11 *H.* 7. which doth certainly Indemnify thoſe who adhere to the Poſſeſſor, although another may claim a better Right; and thereby declares a *Poſſeſſory Right* to be a ſufficient Ground of Allegiance, as far as that Act goes.

There are three ſorts of Perſons may be ſaid to have Poſſeſſion of the Crown, an *Uſurper*, a King *de jure*, and

a King *de facto*; and becauſe the diſtinction between theſe doth not ſeem to be well underſtood, I ſhall briefly explain it.

An Uſurper is one, who comes in by *Force*, and continues by *Force*.

A King *de jure* is one, who comes in by *lineal Deſcent*, as next Heir, and whoſe Right is owned and Recognized by the Eſtates of the Realm.

A King *de facto* is one, who comes in by Conſent of the Nation, but not by Virtue of an *immediate Hereditary Right*; but to ſuch a one being owned and receiv'd by the Eſtates of the Realm, the Law of *England*, as far as I can ſee, requires an *Allegiance*. Or elſe the whole Nation was perjur'd in moſt of the Reigns from the Conqueſt to *H.* 8. for the two *Williams*, ſix at leaſt of the ſeven *Henries*, King *Stephen*, and King *John* were all Kings *de facto*, for ſome time at leaſt, for they came not in as next *Heirs* in a *lineal Deſcent*. But ſtill Oaths of *Allegiance* were taken to them; and no ſuch *Scruples* appear to have been made all that time; nor any charge of *Perjury*, on thoſe who did what our Law and Conſtitution required. Was the Nation *perjured* in the Time of *H.* 7. who, as all know, had no Pretence of an *Hereditary Right*? Yet being received and Crowned, the Oaths of *Allegiance* were taken to Him, before he was Married to the Daughter of *E.* 4. For, he was Crowned 30 *Octob.* 1485. Had the Crown entailed in Parliament *Nov.* 7. and was Married *Jan.* 18. But the firſt Parliament of *R.* 3. endeavoured to make void the Title of the Children of *E.* 4. upon pretence of a *Precontract* with the *E.* of *Shrewsburies* Daughter; and of *George* Duke of *Clarence* by his Attainder, thereby to make *R.* 3. *Right Heir to the Crown*; but leſt theſe things ſhould fail, *to his Claim of Inheritance, they*

join

join their own Election, and desire him to accept the Crown, as to him of Right belonging, as well by Inheritance as by lawful Election. It seems, they would have made him a King *de jure* as well as *de facto*; but the excluding the Children of *E.* 4. never gave Satisfaction since the Lady *Lucy* her self disowned it to the Mother of *E.* 4. And if such an Allegation would hold, the whole Succession both of *York* and *Lancaster* might be questioned; for both derive from *H.* 3. whose Mother was believed at that Time to have been precontracted at least to *Hugh le Brun*, before She was married to K. *John*, and was married to Him, whilst his former Wife was living. And if Q. *Eleanor*'s Divorce from the K. of *France* were not Good (as it is hard to prove it so) what becomes of all the Line of *H.* 2. who married Her, after She had two Children by her former Husband? But if Mens Consciences are tied to a strict legal and *lineal Descent*, they must be satisfied in all these Points. Mat. Weſt. A. 1200.

But supposing the Right of the Children of *E.* 4. to have been never so Good; what doth this make towards the justifying the Oaths of Allegiance, which were made to *H.* 7. whom some will not allow to have any Claim by the House of *Lancaster*, since they say, the same Act which legitimated *John* of *Gaunt*'s Children by *Kath. Swinford*, did exclude them from any Title to the Crown? Yet the *Oaths* of *Allegiance* were taken by the whole Nation in the time of *H.* 7. and no Dispute was then made about it; because it was then believed, that quiet Possession was a sufficient Ground for Allegiance.

It is objected, *That it cannot be agreeable to the Law of* England *to swear Allegiance to a King* de facto, *when the Duke of* Northumberland *suffered by the Law for adhering to a Queen* de facto.

A King *de facto* according to our Law (as I ſaid) is one in quiet Poſſeſſion of the Crown, by Conſent of Parliament, without Hereditary Right; ſuch as *H.* 4, 5, 6, 7. were all thought to be, by thoſe who made this Diſtinction. For, as far as I can find, the Diſtinction of a King *de facto* and *de jure* was then ſtarted, when the Houſe of *York* ſo much inſiſted on their Hereditary Right; and ſo many of our Kings had governed the Kingdom by Conſent without it. Therefore the Lawyers, to find a ſufficient *Salvo* for the Kings of the Houſe of *Lancaſter*, framed this Diſtinction of Kings *de facto* and *de jure*; but ſtill they meant *Kings Regnant*, as they called them, or in full Poſſeſſion of the Royal Dignity by a National Conſent. (The Diſtinction had been better of a two-fold Right, *viz. Poſſeſſory* and *Hereditary.*) But this was far from being the Caſe of *Queen Jane*, who was ſet up by a particular Party againſt the General Senſe of the Nation, as ſoon appeared; for the main Point her Title ſtood upon was this, Whether the King by his Grant could diſpoſe of the Crown againſt an Act of Parliament which ſetled the Succeſſion? and that this was the true Point, appears evidently by Judge *Mountague*'s Papers, who was imployed againſt his Will, in drawing up the Grant. So that the Duke of *Northumberland*'s Caſe doth by no Means reach the Point of a King *de facto*.

Sixth Part of the Homily againſt wilful Rebellion.

But it is further urged from our *Homilies*, *That our Church therein condemns thoſe Engliſh who did ſwear Fidelity to the Dauphin of* France, *breaking their Oath of Fidelity to their Natural Lord the King of* England. To which I anſwer,

(1.) That King *John* was only a King *de facto* himſelf, if a Legal Succeſſion makes a King *de jure*. For, (1.) His eldeſt Brother's Son *Arthur* was then living, as all

all confeſs. (2.) He was convicted of Treaſon againſt his Brother *R.* 1. and the Sentence pronounced againſt him by *Hugo de Pudſey* Biſhop of *Durham*, as the King of *France* pleaded to the Pope's Legat who came to ſolicit for him. (3.) *Hubert* Archbiſhop of *Canterbury* declar'd at his Coronation, that he came not in by *Hereditary Right*, but by *Election*; and he accepted of it ſo. (4.) What Right he had after the Death of his Nephew, he gave up by the Reſignation of his Crown to the Pope. He could have no *Hereditary Right* while *Arthur*'s Siſter lived, who ſurvived him, and was kept in the Caſtle at *Briſtol*. But ſuppoſing it, I do not underſtand how he that gave up his Right of Dominion to the Pope, could ſtill retain it? And if he was Feudatary to the ſame, he could not challenge Allegiance as due to him, but to the Pope as Lord Paramount. And it was pleaded againſt him, *That although he could not diſpoſe of his Crown without Conſent of his Barons, yet he might demiſe it. And upon his Reſignation he ceaſed to be King; and ſo the Throne was vacant. And by that means there was a devolution of Right to the* BARONS *to fill up the Vacanty; who made choice of* LEWIS *by the Right of his Wife, who was Heir to King* John. If after all this, an *Oath* of *Allegiance* to him was lawful, then, I ſay, an Oath to a King *de facto* is ſo, for King *John* was no more.

Mat. Paris. f. 280.

Matt. Weſtm. A. 1216. Mat. Paris. A. 1199.

Mat. Paris. A. 1216. f. 281.

(2.) As to the *Barons* calling in *Lewis*, and forſaking K. *John*, it is neceſſary to obſerve on what Reaſon it is that our *Homilies* condemn it. For the whole deſign of that *Homily* is, to ſhew *the Popes Uſurpations over Princes, and their ſtirring up Subjects to Rebellion againſt them, by diſcharging them from their Oaths; and for thoſe the Inſtance of King* John *is produced.* As appears by the words juſt before; *Now had Engliſh-men at that time known their Duty to their Prince ſet forth in God's Word,*

would

would a great many Nobles, and other English-men natural Subjects, for this foreign and unnatural Usurper his vain Curse of the King, and for his feigned discharging them of their Oath and Fidelity to their Natural Lord, upon so slender, or no Ground at all, have rebelled against their Sovereign Lord the King? Would English Subjects have taken part against the King of England, *and against English Men, with the French King, and French Men, being incensed against this Realm by the Bishop of* Rome?

(3.) This doth not concern the present Case. For Men may condemn those English Men who sent for *Lewis*, and yet may lawfully take the present Oaths. By which Men are not bound to justify such Proceedings, but to promise Faith and Allegiance to such as are in actual Possession of the Throne. Which the Oaths taken to K. *John* will justify.

Thus I have considered the greatest Difficulties I have yet met with about taking the Oaths, and have not dissembled the strength of any of them.

There is only one thing remains, and that is the Answer given to the Case of *Tiberius, who was an Usurper, and yet our Saviour said, Give unto* Cesar *the things that are* Cesar's. The Answer is, *That although it were a forcible Usurpation in* Julius Cesar, *yet before that time the Matter was accorded between the Senate and the Emperors, and they reigned unquestioned without any competition from the Senate.*

So that it was not lawful to swear Allegianc to *Julius Cesar*, who had the full Possession of the Power, but it was to *Tiberius*: And why so? Where was the Right of Government in the time of *Julius Cesar? In the Senate and People.* And so it continued all *Julius Cesar*'s time. But how came the *Senate and People* to lose their Right in the time of *Tiberius?*

(1.) Had

(1.) Had they given it up by any ſolemn Act of theirs, as many ſay they did by the *Lex Regia*, which *Juſtinian* confidently affirms? Then all the Right which the Emperor had, was by *Devolution* from the People; and ſo they acted by virtue of that Power which the *People* gave them; (*Populus* comprehends both *Senate* and *Community.*) And then the Emperors had their Rights of Soveraignty from the People, and not from God. For here was no other Act but that of the People giving up their Right. And then the Caſe of Obedience to the Roman Emperors will be found very different from that of the Northern Kingdoms, where the People never gave up their Rights in ſuch a manner; but in Caſes of Difficulty concerning Succeſſion, the *three Eſtates* did look on themſelves as particularly concerned; as might be eaſily proved, if it were needful, in all the Northern Kingdoms.

(2.) But ſuppoſe they did not formally give up their Right, but were partly wheedled and partly forced out of it; Doth this give a good Title? Suppoſe *Auguſtus* had by his Acts procured the Conſent of the People, as to his own Government; What was this to *Tiberius*? Did they give him a Power to make whom he pleaſed his Succeſſor? Something may be ſaid from *Dion* and *Strabo* as to the former; but there is no Pretence as to the latter: For it was a meer Arbitrary Act in *Auguſtus* to nominate *Tiberius*; and all the Title he had at firſt was from the Prætorian Band and Legions: Afterwards *the Conſuls, and Senate, and Souldiers, and People did ſwear Allegiance to him*, as the Hiſtorians tell us. Now here I deſire to know, whether *Tiberius* were any more than Emperor *de facto*, when they did thus ſwear to him? For all the Right he had was from their voluntary Submiſſion to him at *Rome*. Tacit. l. 1.

(3.) As

(3) As to the Roman Provinces, *Tacitus* ſaith, *They were*
Tacit. ib. *content with the preſent change of Government, becauſe they ſuffered by the Factions and Avarice of the great Men; which made them weary of the Government by the Senate and People.* But this only ſhews they were willing to change their Maſters, hoping they might mend their Condition, but ſignifies little to the matter of Right. Since after they were made *Provinces*, they owned their Subjection to the Roman Government, by *paying Tribute, and receiving Magiſtrates* from it, however that Government was managed, whether by Senate or People, or by one who had the Imperial Power, whatever Name he were called by. But as to the Province of *Judea* in particular, there are ſeveral Conditions of it to be conſidered.

(1.) While it was tributary to the Kings of *Perſia* and *Syria*. Jaddus *the High Prieſt told* Alexander *that*
Joſeph. l. 11. c. 8. *they had taken an Oath of Fidelity to* Darius, *and therefore could not bear Arms againſt him while he lived.* But was *Darius* King *de jure* or *de facto* over the *Jews?* He was not King over them by a lineal Succeſſion from their own Princes; nor by the Fundamental Conſtitu-
Deut. 17. 15. tion of their Government, which owned no *legal King* that was not of their Brethren: I do not ſay they were not to ſubmit to, but not to chuſe any other. But what Right had *Darius* over the *Jews*, any more than ſucceeding in the *Perſian* Monarchy gave a Right to the *Chaldean* Conqueſts? I grant, the *Jews* did act under
Neh. 8. 9. the *Perſian* Monarchs, as *Nehemiah* was Governour under *Artaxerxes*, and that they did ſwear to them, appears by *Jaddus*; but the Queſtion is, On what Right that Oath was founded? and whether upon *Alexander*'s Conqueſt, they could not as well take a new Oath to him? For why ſhould not preſent actual Dominion give

as

as much Right, as ſucceeding into anothers Right of Dominion, which was at firſt gained by Conqueſt? If Poſſeſſion gives Right in one caſe, why not in the other; ſince there is more Reaſon for Allegiance, where there is a Power of Protection, than where there is none. And ſo we find *Jaddus* and the *Jews* did ſubmit to *Alexander* afterwards, and ſome of them went into his Army, although *Darius* was ſtill living; which ſhews, that as they were not forward to break their Allegiance ſworn to *Darius*; ſo they were not obſtinate in oppoſing *Alexander*, but yielded to the over-ruling Hand of Providence.

(2.) When the *Jews* had their Liberty granted them by the Kings of *Syria*. For *Antiochus Eupator* made *Peace with them, by which they were to have the Liberty of their own Laws*; and although he ſoon brake his Agreement with them; yet the *Lacedæmonians* and *Romans* owned them as a *Free-People*, and treated with them as ſuch. And *Simon* pleaded to *Athenobius* in this War; *We have neither taken other Mens Land, nor holden that which appertaineth to others; but the Inheritance of our Fathers, which our Enemies had wrongfully in Poſſeſſion a certain time. Wherefore we having Opportunity, hold the Inheritance of our Fathers.* Which plainly ſhews, that they look'd on thoſe who ruled over them as unjuſt Poſſeſſors; at that time when they were ſo far under them, as to ſwear Allegiance to them. After this *Antiochus Pius* did grant them their Liberty upon Compoſition; which they enjoyed as their Neighbours did, and ſuffered not as Slaves to the Kings of *Syria*, but as ſometimes oppreſſed by them.

Joſeph. 12. c. 15.

1 Maccab. 14. 16. 40.

15. 33. 34.

(3.) When they were reduced into the form of a *Roman Province*; which was done by *Pompey*. And from that time they were in Subjection to the Roman State;

being only permitted to enjoy the Liberty of their Religion.

But I shall take notice only of the case of the *Jews* Subjection to the Roman Emperor in our Saviour's time. *Suetonius* takes notice of *the strange Impudence of* Tiberius, *in seeming so long to decline the accepting the Soveraignty, when from the very first he had assumed the Soveraign Power, without asking the Leave either of Senate or People.* —* *Tacitus* saith, *That he took upon him the Government immediately upon the Death of* Augustus; *and did exercise the Imperial Power every where; only when he was in the Senate he seemed to demur, for Fear of* Germanicus *and his* Legions.

† Dio, *That he exercised all the parts of the Government, having secured the* Italian *Forces to himself*; but he declined the Name, till he understood the Design of *Germanicus*.

* Principatum, quamvis neq; occupare confestim, neque agere dubitâsset, et statione militum, hoc est, vi et specie dominationis assumpta, diu tamen recusavit impudentissimo animo. *Sueton. c.* 24.]

*Sed defuncto Augusto, signum prætoriis cohortibus, ut Imperator dederat, Excubiæ; Arma, cætera Aulæ; Miles in forum, miles in curiam comitabat; literas ad Exercitus, tanquam adepto Principatu misit; nusquam cunctabundus nisi cum in Senatu loqueretur. *Tacit.* l. 1. & *Dio.* l. 57.

So that here we have a plain *Original* Usurpation in *Tiberius*; there being no consent of Senate and People to his assuming the Soveraign Power. And yet *Tacitus* saith, *First the Consulls and great Officers, then the Senate and People did swear Allegiance to him.* Which was before he had their Consent. For he used his own Art afterwards, that he might seem to be chosen by them; and not to come to his Power by the force of Arms, or the Intrigues of his Mother. But what Appearance of consent soever afterwards he gained from the *Senate*, it was extorted from them by Force or Fraud; as is evident from the same Historians. But what Right can such

ſuch a Conſent give? And he took away the Remainder of the Peoples Liberties in their *Comitia*, and never asked their Conſent.

What then was the Right of *Tiberius* to the Government founded upon? *Auguſtus* had ſeveral repeated Acts, whereby they continued his Government from time to time, and thereby ſhewed their Conſent, as *Dion* and *Strabo* affirm, *that the whole Government was committed to him from the Senate and People*; But what is there like this in the Caſe of *Tiberius? He was* Auguſtus *his Wife's Son, and he made him his Heir by his Teſtament*: And what was that to the Roman State? Was not *Agrippa Poſthumus*, then living, much nearer to *Auguſtus*, who was his own Grand-child? And by the Story in *Tacitus* of *Fabius Maximus*, ſeemed deſigned by him to ſucceed him; but upon the Diſcovery of it, firſt *Auguſtus*, and then *Agrippa* was ſent out of the World to make way for *Tiberius*, who had before-hand engaged the Italian Legions. So that he truſted to no Teſtamentary Right, as appears by all his Colluſions with the Senate, which there had been no place for, if he had aſſumed the Government by virtue of *Auguſtus* his *Teſtament* or *Adoption*.

Here we have then a plain Inſtance of one who was in the Poſſeſſion of Power without Colour of Right, and yet *Oaths* of *Allegiance* were taken to him, both by the Senate and People. And when theſe Oaths were taken, there was no adjuſting the matter between him and the Senate; for he had newly aſſumed the Government by Force when they took theſe Oaths. Here was no unqueſtion'd Authority from the Senate (whatever *Vell. Paterculus* pretends) but when he had gotten the Power into his Hands, he required them to own it.

Auguſtus was ſo wiſe, as when they offer'd him their Oaths, he refuſed them for this Reaſon; *He conſidered well*, ſaith *Dio*, *that if they gave their free Conſent, they would do what they promiſed without ſwearing; and if they did not, all the Oaths in the World would not make them.* But *Tiberius* was of another Mind, and he required their Oaths in the firſt place; and it is not improbable that the ſame were required in ſeveral Provinces.

Dio *l.* 54.

When our Saviour appeared in *Judea*, *Tiberius* was in Poſſeſſion of this Power, over the Roman Empire; and becauſe the Jews were more ſcrupulous than other People, on account of their Fundamental Laws, as to the owning any uſurped Juriſdiction over them; ſome among them put the Queſtion to him about paying Tribute to *Cæſar*, *i.e.* about owning any Act of Subjection to an Uſurped Power. For there were plauſible Arguments on both ſides; one was from the Strictneſs of their Laws; the other was from the Benefit they received from the Roman Protection. The former ſeemed to have more of Conſcience, and the latter of Human Prudence. Our Saviour takes a wiſe Method to anſwer the Doubt; he asks for the Currant Tribute-Mony, and finding it had *Ceſar*'s Superſcription, ſaith, *Give to* Ceſar *the things that are* Ceſar's. They might have replied, they are his *de facto*, but not *de Jure*. Why did not our Saviour anſwer this Difficulty, but leave them to collect their Duty from the uſe of *Ceſar*'s Coin among them? Might not one that had no Right, have the Power of coining Mony, and diſperſing it, ſo that it ſhould be in common uſe? And was not *Tiberius* ſuch an one? What then doth he mean by this Anſwer? Either we muſt ſay, that he declines the main Queſtion, or that

that he resolved it to be lawful, upon general Reasons, to shew Acts of Subjection to such a Power, which we may not be satisfied, is according to our Laws. For so it is plain the Roman Power was not agreeable to the Jewish Constitution; and although that were from God, yet our Saviour, who gives the best Directions for Conscience, would by no means have Men to be peevish or obstinate in such Matters.

But paying of Tribute is quite another thing from Oaths of Allegiance. It is so, as to the manner of testifying our Subjection; but the main Question is, Whether any Act of Subjection be lawful or not? If it be lawful to testify it one way, why not another? If in paying Tribute, why not in solemn promising to pay it? If in promising, why not in swearing, *i. e.* in calling God to witness that I do it? Thus far then we may go; *we may swear to pay Tribute*; But on what account? Is it not as a Token of Allegiance, *i. e.* of a Duty owing on the account of Protection? Then we have gained one step farther, *viz.* that we may swear to perform some parts of Allegiance. But why then may we not do so as to all that such an Oath implies? If it respects no more than the Duty which we owe, with respect to the Publick. And that is certainly the meaning of an Oath, when all Declarations of Right are left out, and only those of Duty expressed, as it is in our present Case.

As to the dreadful Charge of *Perjury* and *Apostacy*, which some, of much greater Heat than Judgment, have made use of against those who hold it lawful to take the Oaths; If what I have said be true, it is little less than ridiculous: And it would have had more appearance of Reason, if the *Pharisees* had urged it

it againſt our *Saviour's* Reſolution of the Caſe about *Tribute-Mony*. For, had not God by his own Law ſettled the Government among them? And was it not a Fundamental Article of that Law, that none ſhould rule over them, but one of their Brethren? Was the Roman Emperor, or *Pontius Pilate* ſuch? Have not all the ancient Zealots of the Law oppoſed any ſuch Foreign Power? What can it be then leſs than *Perjury and Apoſtacy* to give any Countenance to ſuch an open Violation of this Law, and to incourage Men to renounce it; when they find ſuch Liberties allowed by ſuch a Teacher? But I forbear.

To conclude then; I have, at your earneſt Deſire, taken this Matter into ſerious Conſideration, and have impartially weighed the moſt preſſing Difficulties I have met with; I cannot promiſe to give you Satisfaction, but I have ſatisfied my ſelf, and have endeavoured to do the ſame for you. I am heartily ſorry for any Breaches among us at this time, and it is eaſy to foreſee who will be the Gainers by them. But I am glad to underſtand that the chiefeſt of thoſe who ſcruple the Oaths, have declared themſelves againſt the Attempts of ſuch an *unſeaſonable Separation*, and I hope others will be ſo wiſe as to follow their Example.

I am, Sir,

Octob. 15.
1689.

Yours.

Books lately Printed for Richard Chiſwell.

THE Caſe of Allegiance in our preſent Circumſtances conſidered, in a Letter from a Miniſter in the City to a Miniſter in the Country, 4o.

A Breviate of the State of *Scotland* in its Government, Supream Courts, Officers of State, Inferiour Officers, Offices and Inferiour Courts, Diſtricts, Juriſdictions, Burroughs Royal, and Free Corporations. *Fol.*

Some Conſiderations touching Succeſſion and Allegiance. 4*to.*

Reflections upon the late Great Revolution: Written by a Lay-Hand in the Country, for the ſatisfaction of ſome Neighbours.

The Hiſtory of the Deſertion; or an Account of all the publick Affairs in *England*, from the beginning of *September*, 1688, to the Twelfth of *February* following. With an Anſwer to a Piece called, *The Deſertion Diſcuſſed*, in a Letter to a Country-Gentleman. By a Perſon of Quality.

K. *William* and K. *Lewis*. Wherein is ſet forth the inevitable neceſſity theſe Nations lie under of ſubmitting wholly to one or other of theſe Kings; And that the matter in Controverſy is not now between K. *William* and K. *James*, but between K. *William* and K. *Lewis* of *France*, for the Government of theſe Nations.

A Sermon preached at *Fulham*, in the Chappel of the Palace, upon *Eaſter*-Day 1689. at the Conſecration of the Right Reverend Father in God *Gilbert* Lord Biſhop of *Sarum*: By *Anthony Horneck*, D. D.

The Judgments of God upon the *Roman Catholick Church*, from its firſt rigid Laws for univerſal Conformity to it, unto its laſt End. With a proſpect of theſe near approaching Revolutions, *viz.* The Revival of the *Proteſtant* Profeſſion in an eminent Kingdom, where it was totally ſuppreſſed. The laſt End of all *Turkiſh* Hoſtilities. The general Mortification of the Power of the *Roman Church* in all parts of its Dominions. In Explication of the *Trumpets* and *Vials* of the *Apocalypſe*, upon Principles generally acknowledged by *Proteſtant* Interpreters. By *Drue Creſſener*, D. D.

A Diſcourſe concerning the Worſhip of Images; preached before the Univerſity of *Oxford*. By *George Tully*, Sub-Dean of *York*, for which he was ſuſpended.

Two Sermons, one againſt Murmuring, the other againſt Cenſuring: By *Symon Patrick*, D. D. now Lord Biſhop of *Chicheſter*.

An Account of the Reaſons which induced *Charles* the Second, King of *England*, to declare War againſt the *States General* of the United Provinces in 1672. And of the *Private League* which he entred into at the ſame Time with the *French King* to carry it on, and to eſtabliſh Popery in *England*, *Scotland*, and *Ireland*, as they are ſet down in the *Hiſtory of the Dutch War*, printed in *French* at *Paris*, with the Privilege of the French King, 1682. Which Book he cauſed to be immediately ſuppreſs'd at the Inſtance of the Engliſh Ambaſſador. *Fol.*

An Account of the Private League betwixt the late King *James* the Second and the *French* King. *Fol.*

Dr. *Wake*'s Sermon before the King and Queen at *Hampton-Court*.

Dr.

Dr. Tenniſon's Sermon againſt Self-love, before the Houſe of Commons, *June* 5. 1689.

Mr. Tully's Sermon of Moderation, before the Lord-Mayor, *May.* 12. 1689.

An Examination of the Scruples of thoſe who refuſe to take the Oath of Allegiance. By a Divine of the Church of *England.*

A Dialogue betwixt two Friends, a *Jacobite* and a *Williamite*; occaſioned by the late Revolution of Affairs, and the Oath of Allegiance.

The Caſe of Oaths ſtated. 4*to.*

A Letter from a *French* Lawyer to an *Engliſh* Gentleman, upon the Preſent Revolution. 4*to.*

The Advantages of the preſent Settlement, and the great danger of a Relapſe.

The Intereſt of *England* in the Preſervation of *Ireland.*

The Anſwer of a Proteſtant Gentleman in *Ireland* to a late Popiſh Letter of *N. N.* upon a Diſcourſe between them, concerning the preſent Poſture of that Country, and the Part fit for thoſe concern'd there to act in it. 4*to.*

An Apology for the Proteſtants of *Ireland*, in a brief Narrative of the late Revolutions in that Kingdom; and an Account of the preſent State thereof: By a Gentleman of Quality. 4*to.*

A true Repreſentation to the King and People of *England* how Matters were carried on all along in *Ireland* by the late K. *James*, in favour of the *Iriſh* Papiſts there, from his Acceſſion to the Crown to the 10*th* of *April* 1689.

The Mantle thrown off: or the Iriſh-Man diſſected, 4*to.*

Reflections upon the Opinions of ſome Modern Divines, concerning the Nature of Government in general, and that of *England* in particular. With an Appendix relating to this Matter, containing, 1. The Seventy fifth Canon of the *Council* of *Toledo.* 2. The Original Articles in *Latin*, out of which the *Magna Charta* of King *John* was framed. 3. The true *Magna Charta* of King *John* in *French*: By which the *Magna Charta* in *Matth. Paris* is cleared and juſtified, and the Alterations in the Common *Magna Charta* diſcovered. (Of which ſee a more particular Account in the Advertiſement before the Appendix.) All three Engliſhed.

The Doctrine of Non-Reſiſtance, or Paſſive Obedience no way concerned in the Controverſies now depending between the *Williamites* and the *Jacobites.*

Jacobi Uſſerii *Armachani Archiep. Hiſtoria dogmatica Controverſiæ inter Orthodoxos & Pontificios de Scripturis & Sacris Vernaculis, nunc primum edita. Acceſſerunt Ejuſdem diſſertationes de Pſeudo-Dionyſii ſcriptis, & de Epiſtola ad* Laodicenos *ante hac inedita. Deſcripſit, digeſſit & notis aux; Auctuario completavit* Henricus Wharton, A. M. *R. Archiep. Cantuar. à Sacris Domeſt.* 4°.

A Diſcourſe concerning the Unreaſonableneſs of a new Separation on Account of the Oaths. With an Anſwer to *the Hiſtory of Paſſive Obedience.*

A Diſcourſe concerning the Eccleſiaſtical Commiſſion opened in the *Star-Chamber*, *Octob.* 19. 1689.